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IN THE DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

Civil Action No. 92 CV 7223, Courtroom 19

AMENDED COMPLAINT

RICHARD G. EVANS; ANGELA ROMERO, LINDA FOWLER, PAUL BROWN, JANE DOE, MARTINA NAVRATILOVA, BRET TANBERG, PRISCILLA INKPEN, JOHN MILLER, THE BOULDER VALLEY SCHOOL DISTRICT RE-2, THE CITY AND COUNTY OF DENVER, THE CITY OF BOULDER, THE CITY OF ASPEN, and THE CITY COUNCIL OF ASPEN,

Plaintiffs,

v.

ROY ROMER as Governor of the State of Colorado, GALE NORTON as Attorney General of the State of Colorado, and THE STATE OF COLORADO,

Defendants.

Plaintiffs Richard G. Evans, Angela Romero, Linda Fowler, Paul Brown, Jane Doe, Martina Navratilova, Bret Tanberg, Priscilla Inkpen, John Miller, the Boulder Valley School District RE-2, the City and County of Denver, the City of Boulder, the City of Aspen, and the Aspen City Council, through counsel, in Complaint against the defendants, state as follows:

INTRODUCTION

This is an action seeking a declaration that Amendment 2, approved by the Colorado electorate in the general election of November 3, 1992, violates the constitutions of the United States and the State of Colorado. Amendment 2 relegates gay men, lesbians and bisexuals to a second class citizenship contravening the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as well as other state and federal constitutional provisions.

Plaintiffs seek to enjoin defendants from proclaiming, declaring, or acknowledging Amendment 2 to be part of the Constitution of Colorado, and from enforcing or implementing it in any way.

JURISDICTION AND VENUE

This action for declaratory and injunctive relief is brought under the Uniform Declaratory Judgments Act, Colo. Rev. Stat. §§ 13-51-101, et seq., Rules 57 and 65 of the Colorado Rules of Civil Procedure, and 42 U.S.C. § 1983.

State courts have jurisdiction over claims arising under 42 U.S.C. §1983 by virtue of the Supremacy Clause of Article IV of the United States Constitution.

Venue is proper in this Court under Rule 98(c) of the Colorado Rules of Civil Procedure.

GENERAL ALLEGATIONS

Background

1. On November 3, 1992, the following proposed amendment to Article II of the Colorado Constitution was submitted to the voters as Amendment 2:

Neither the State of Colorado, through any of its branches or departments, nor any of its agencies, political subdivisions, municipalities or school districts, shall enact, adopt or enforce any statute, regulation, ordinance or policy whereby homosexual, lesbian or bisexual orientation, conduct, practices or relationships shall constitute or otherwise be the basis of, or entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination. This Section of the Constitution shall be self-executing.

2. On November 5, 1992, the Denver Post reported that 811,479 electors had voted for Amendment 2 and 707,525 electors had voted against it.

3. On information and belief, a proclamation giving effect to Amendment 2 will take place on or before January 16, 1993.

Plaintiffs

4. Plaintiff Richard G. Evans is a citizen of the United States and a resident of Denver, Colorado. He is employed by the City and County of Denver. Plaintiff Evans is a gay man.

5. Plaintiff Angela Romero is a citizen of the United States and a resident of Denver, Colorado. She is employed by

the City and County of Denver as a police officer. Plaintiff Romero is a lesbian.

6. Plaintiff Paul Brown is a citizen of the United States and a resident of Denver, Colorado. He is employed by the State of Colorado. Plaintiff Brown is a gay man.

7. Plaintiff Linda Fowler is a citizen of the United States and a resident of Denver, Colorado. She is employed as a contract administrator by a private employer. Plaintiff Fowler is a lesbian.

8. "Jane Doe" is the assumed name of a citizen of the United States and a resident of Denver, Colorado. She is employed by a public entity in Jefferson County. Plaintiff Doe is a lesbian.

9. Plaintiff Martina Navratilova is a citizen of the United States and a resident of Aspen, Colorado. She is a professional tennis player. Plaintiff Navratilova is a lesbian.

10. Plaintiff Priscilla Inkpen is a citizen of the United States and a resident of Boulder, Colorado. Plaintiff Inkpen is an ordained minister. Plaintiff Inkpen is a lesbian.

11. Plaintiff John Miller is a citizen of United States and a resident of Colorado Springs, Colorado. Plaintiff Miller is Professor of Spanish at the University of Colorado - Colorado Springs (UCCS), Chair of the UCCS Department of Language and Culture and Chair of the University of Colorado's system-wide University Faculty Council. Plaintiff Miller is a gay man.

12. Plaintiff Boulder Valley School District RE-2 ("the School District"), as a Colorado public school district duly constituted pursuant to the laws of Colorado, is a political subdivision of the State of Colorado and a quasi-municipal corporation with its administrative offices located in Boulder County, Colorado. The School District acts by and through its duly qualified and elected Board of Education.

13. Plaintiff Bret Tanberg is a citizen of the United States and a resident of Evans, Colorado. He is currently infected with the Human Immunodeficiency Virus ("HIV"), and has been diagnosed as having Acquired Immune Deficiency Syndrome ("AIDS"). Plaintiff Tanberg is heterosexual, but suffers discrimination based on a perception that he is gay.

14. Plaintiffs City of Boulder and City of Aspen are duly established and constituted home rule municipal corporations

under Section 6 of Article XX of the Constitution of Colorado. Plaintiff City and County of Denver is a duly established and constituted home rule municipal corporation under Sections 4 and 5 of Article XX of the Constitution of Colorado.

15. Plaintiff City Council of the City of Aspen is the duly authorized legislative and governing body for the City of Aspen pursuant to Article III of the Home Rule Charter for the City of Aspen.

Defendants

16. Defendant Roy Romer is Governor of the State of Colorado. Defendant Romer is required by Article IV, Section 2 of the Colorado Constitution to "take care that the laws be faithfully executed." Defendant Romer is also required by Article V, Section 1, Paragraph (4) of the Colorado Constitution to make a proclamation, the effect of which will be to enact Amendment 2, not later than thirty days after the vote has been canvassed. The vote is to be canvassed by the Secretary of State within 21 days after the election.

17. Defendant Gale Norton is Attorney General of the State of Colorado and required by Colo. Rev. Stat. § 24-31-101(1)(a) to "prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor."

18. Defendant State of Colorado was created under the authority of the Enabling Act, Act of March 3, 1875, ch. 139, 18 Stat. 474, and encompasses the branches, departments, agencies, and political subdivisions subject to the proscriptions of Amendment 2.

Factual Allegations

19. Sections 28-93 through 28-97 of the Denver Municipal Code currently protect plaintiffs Evans, Romero, Brown, Fowler and Doe from discrimination in employment, educational institutions, real estate transactions, public accommodations, and health and welfare service on the basis of their sexual orientation. If Amendment 2 repeals these sections as they apply to gay men, lesbians and bisexuals, plaintiffs Evans, Romero, Brown, Fowler and Doe will face the real, immediate and substantial risk of discrimination on the basis of their sexual orientation in employment, educational institutions, real estate transactions, public accommodations, and health and welfare services.

20. Rules and Regulations of the Denver Police Department, RR-122, and §117.01 ("Officer's Bill of Rights") in the Police Department Operations Manual currently protect plaintiff Romero from discrimination on the basis of her sexual orientation. Following enactment of Amendment 2, Plaintiff Romero will lose these protections and face the real, immediate and substantial risk of discrimination in her employment on the basis of sexual orientation.

21. An executive order issued by Governor Roy Romer and dated December 10, 1990, and policy 11-1 of the Code of Colorado Regulations currently protects plaintiff Brown from discrimination in his employment. Following enactment of Amendment 2, Plaintiff Brown will lose these protections and face the real, immediate and substantial risk of discrimination in his employment on the basis of his sexual orientation.

22. On November 28, 1977, the City of Aspen, by and through the City Council for the City of Aspen, adopted Ordinance No. 60 (Series of 1977) prohibiting discrimination in employment, housing, public services and public accommodations within the City of Aspen on the bases of race, color, creed, religion, ancestry, national origin, sex, age, marital status, physical handicap, affectional or sexual orientation, family responsibility, or political affiliation. The ordinance has been codified in section 13-98 of the Aspen Municipal Code.

23. Section 13-98 of the Aspen Municipal Code prohibits discrimination on the basis of sexual orientation in housing, employment, public services and accommodations. Amendment 2 purports to repeal these provisions as they apply to gay men, lesbians and bisexuals. If Amendment 2 repeals this section as it applies to lesbians Plaintiff Navratilova will face the real, immediate and substantial risk of discrimination on the basis of her sexual orientation in housing, public services and accommodations.

24. Following enactment of Amendment 2, local government bodies will not be able to adopt or enforce ordinances or regulations prohibiting discrimination against gay, lesbian or bisexual citizens.

25. Sections 12-1-2 through 4 of the Boulder Revised Code prohibit discrimination on the basis of sexual orientation in housing, employment and public accommodations. Amendment 2 purports to repeal these provisions as they apply to gay men, lesbians and bisexuals. If Amendment 2 so repeals these sections, plaintiff Inkpen will face the real, immediate and

substantial risk of discrimination on the basis of her sexual orientation in housing, employment and public accommodations.

26. Policy JFH, Student Complaints and Grievances, was adopted by the School District's Board of Education on June 18, 1992. Its implementing regulation was issued on the same date. Together, Policy JFH and its implementing regulation declare that no student shall be subjected to discrimination. They establish a procedure which, in pertinent part, affords aggrieved students the right to seek redress for alleged discrimination expressly including discrimination based on sexual orientation. Amendment 2 will prevent the School District from enforcing Policy JFH and its implementing regulation.

27. Following enactment of Amendment 2, heterosexual persons will be able to avail themselves of the above stated protections against discrimination on the basis of sexual orientation provided that the discrimination is not based on a perception that such persons are gay, lesbian or bisexual, but gay men, lesbians and bisexuals or persons so perceived will not be able to avail themselves of the protections.

28. The defendants are state officials acting under the color of state law within the meaning of 42 U.S.C. § 1983.

29. Following enactment of Amendment 2, plaintiffs will be deterred from associating in ways consistent with their sexual orientation.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Equal Protection Clause

30. Plaintiffs incorporate by reference paragraphs 1 through 29.

31. Amendment 2 purports to forbid the courts of the State of Colorado from enforcing local ordinances, federal or state statutes or constitutional provisions that recognize or protect gay men, lesbians or bisexuals.

32. Amendment 2 affirmatively authorizes, encourages and may require public and private discrimination on the basis of actual or perceived gay, lesbian and bisexual orientation and establishes the right to discriminate against gay men, lesbians and bisexuals as one of the basic policies of the State of Colorado.

33. Amendment 2 places substantial and unique burdens on gay men, lesbians and bisexuals to obtain legislation, executive policies and judicial determinations in their interest in state, municipal or school district forums regardless of the merits or, or need for, such legislation, policies or determinations and creates classifications that impinge upon the fundamental rights to vote and to participate equally in the political process. This diminished status and resulting stigma does not extend to any other group or class of citizens under the laws or constitution of the State of Colorado.

34. For the above stated reasons, Amendment 2 deprives the plaintiffs of their rights to equal protection of the laws as protected by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983, and by the Due Process Clause in Article II, Section 25 of the Colorado Constitution.

SECOND CLAIM FOR RELIEF

Freedom of Association and Expression

35. Plaintiffs incorporate by reference paragraphs 1 through 34.

36. Amendment 2 disadvantages and discriminates against persons who hold a particular point of view by excluding a particular idea or belief about sexual orientation from being acted on through normal legislative, executive and judicial processes in Colorado.

37. Amendment 2 has the purpose and effect of limiting meaningful individual and collective advocacy of political, social and economic change on behalf of gay men, lesbians and bisexuals in securing equal rights for these persons.

38. Amendment 2 has the purpose and effect of coercing persons to adhere or profess to adhere to a single, state-approved belief respecting gay, lesbian or bisexual orientation.

39. By affirmatively authorizing and encouraging discrimination on the basis of gay, lesbian or bisexual orientation, Amendment 2 chills the speech of those persons who would otherwise freely speak out on matters related to gay, lesbian or bisexual orientation.

40. For the above stated reasons, Amendment 2 violates the plaintiffs' rights under the First Amendment to the United States

Constitution and Article II, Section 10 of the Colorado Constitution.

THIRD CLAIM FOR RELIEF

Establishment Clause

41. Plaintiffs incorporate by reference paragraphs 1 through 40.

42. Amendment 2 is based upon and embodies a particular religious view regarding gay, lesbian and bisexual orientation. The primary effect of Amendment 2 is to advance a particular religious belief with respect to sexual orientation.

43. Amendment 2 has no secular purpose. Instead, its purpose, and primary effect, is to advance a particular religious belief.

44. For the above stated reasons, Amendment 2 violates the plaintiffs' rights under the First Amendment to the United States Constitution and Article II, Section 4 of the Colorado Constitution.

FOURTH CLAIM FOR RELIEF

Petition Clause

45. Plaintiffs incorporate by reference paragraphs 1 through 44.

46. Amendment 2 denies plaintiffs the fundamental right to petition their government for a redress of grievances in violation of the First Amendment to the United States Constitution and Article II, Section 10 of the Colorado Constitution.

FIFTH CLAIM FOR RELIEF

Vagueness

47. Plaintiffs incorporate by reference paragraphs 1 through 46.

48. Amendment 2 neither defines its own terms, nor specifies the intended sweep of its prohibitions.

49. Plaintiffs and others are forced to guess as to Amendment 2's scope and meaning, and will thereby be deterred

from engaging in lawful and constitutionally protected activities.

50. Amendment 2 invites subjective, arbitrary, and viewpoint-based enforcement.

51. By imposing impermissibly vague prohibitions, Amendment 2 on its face violates the plaintiffs' rights under the Due Process Clause of the Fourteenth Amendment and the First Amendment to the United States Constitution, as well as the Due Process Clause of Article II, Section 25 of the Colorado Constitution and Article II, Section 4 of the Colorado Constitution.

SIXTH CLAIM FOR RELIEF

Republican Form of Government

52. Plaintiffs incorporate by reference paragraphs 1 through 51.

53. By allowing Colorado voters to deprive plaintiffs of certain fundamental rights, as elsewhere alleged in this complaint, the use of the initiative as a means for adopting Amendment 2 is a violation of Article IV, Section 4 of the United States Constitution, under which each state and the citizens of each state, are guaranteed a republican form of government, and of the Enabling Act to the Colorado Constitution that also guarantees to the plaintiffs a republican form of government.

SEVENTH CLAIM FOR RELIEF

Limits on Initiative

54. Plaintiffs incorporate by reference paragraphs 1 through 53.

55. An initiated constitutional amendment that places certain legislation beyond the reach of the general assembly violates Article V, section 1(4) of the Colorado Constitution, which provides that "[t]his section [reserving to the people the power to initiate amendments to the constitution] shall not be construed to deprive the general assembly of the power to enact any measure."

56. By purporting to limit the home rule powers of Article XX, as well as various individual rights protected by Article II of the Colorado Constitution, Amendment 2 constitutes a revision to the constitution which may only be effected through the

constitutional convention process provided in Article XIX, Section 1 of the Colorado Constitution.

EIGHTH CLAIM FOR RELIEF

Article XX of the Colorado Constitution

57. Plaintiffs incorporate by reference paragraphs 1 through 56.

58. The cities of Denver, Aspen and Boulder have exercised the home rule powers granted to them by Section 6 of Article XX of the Colorado constitution to prohibit discrimination based on sexual orientation in various settings. A construction purporting to void these ordinances as they apply to gay men, lesbians and bisexuals would be in conflict with the limitation stated in Article XX of the Colorado Constitution.

59. A constitutional amendment placing certain legislation, regulations and policies beyond the reach of municipalities when such legislation, regulations and policies are required by local conditions would usurp the powers granted to home rule cities by Article XX, Section 6 of the Colorado Constitution. Article XX protects those powers except when there is an explicit declaration to the contrary. Amendment 2 is not such a declaration.

60. Article XX of the Colorado Constitution, enacted in 1902 and establishing home rule authority, operates as an implied limitation on Article V, which reserves to the people the power to initiate amendments to the constitution, enacted as part of the original constitution in 1876.

NINTH CLAIM FOR RELIEF

Article IX, Section 15 of the Colorado Constitution

61. Plaintiffs incorporate by reference paragraphs 1 through 60.

62. Article IX, Section 15 of the Colorado Constitution vests in local boards of education the authority to control instruction in the public schools of their respective districts. Local control by district boards of education is the focus of historical development of public education in Colorado.

63. Among the express duties charged to local boards of education is the duty to adopt written policies, rules and regulations relating to conduct, safety and welfare of all pupils, or

any class of pupils enrolled in the public schools. C.R.S. Section 22-32-109(1)(w).

64. In exercising its constitutional authority to control instruction and in fulfilling its duty to adopt policies and regulations concerning the conduct, safety and welfare of all pupils, the School District has established the right of students to seek redress for alleged discrimination based on sexual orientation.

65. By purporting to nullify that part of the School District's policy and regulation proscribing discrimination based on sexual orientation, Amendment 2 divests the School District, acting through its Board of Education, of its constitutional and statutory authority to exercise local control over the School District in violation of Article IX, Section 15 of the Colorado Constitution.

TENTH CLAIM FOR RELIEF Supremacy Clause and Access to Courts

66. Plaintiffs incorporate by reference paragraphs 1 through 65.

67. Amendment 2 prevents state courts from enforcing statutes, regulations, ordinances and policies whereby gay, lesbian or bisexual orientation, conduct, practices or relationships are the basis of a claim of discrimination.

68. Amendment 2 prevents state courts and municipal courts from hearing cases raising claims or defenses that involve federal or state statutes, local ordinances and policies, or constitutional provisions that recognize or protect existing or future rights of gay men, lesbians or bisexuals. Amendment 2 places the state government and municipalities in the position of incurring legal liability for violation of the constitutional provisions.

69. For the above stated reasons, Amendment 2 violates the Supremacy Clause of Article VI, paragraph 2 of the United States Constitution, the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the access to the courts provision of the Colorado Constitution, Article II, Section 6.

ELEVENTH CLAIM FOR RELIEF

Limitation on Amendments to State Constitution

70. Plaintiffs incorporate by reference paragraphs 1 through 69.

71. Although the People of the State of Colorado retain the power to amend the state constitution, the state constitution prohibits an amendment that conflicts with the federal constitution. Amendment 2 conflicts with the federal constitution.

72. Amendment 2 unlawfully attempts to limit the constitutional authority of home rule cities as granted under Article XX of the Colorado Constitution to adopt and enforce legislation or regulations protecting rights as granted to citizens under the Constitution of the United States, including legislation and regulations prohibiting discrimination within their municipal boundaries on the basis of sexual orientation.

73. For the above stated reasons, Amendment 2 violates Article II, Section 2 of the Colorado Constitution.

WHEREFORE, the plaintiffs pray for relief and judgment as follows:

A. to declare that Amendment 2 to Article II of the Colorado Constitution violates the United States Constitution, 42 U.S.C. § 1983, and the Colorado Constitution on the above enumerated grounds;

B. to enjoin defendant Romer from proclaiming the vote which would otherwise give effect to Amendment 2;

C. to enjoin defendant Romer from enforcing Amendment 2;

D. to enjoin defendant Norton from enforcing Amendment 2;

E. to enjoin defendant State of Colorado, including its branches, departments, agencies, political subdivisions, municipalities and school districts from in any way enforcing, recognizing or giving effect to Amendment 2.

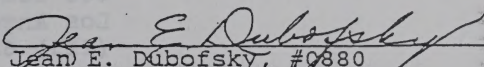
F. to declare that the protections adopted by various state and local governmental entities prohibiting discrimination on the basis of sexual orientation remain in force as adopted by the respective entities;

G. for costs, expert witness fees, and attorneys' fees as may be allowed by law; and

H. for such other and further relief as the Court deems just and proper.

Respectfully submitted this 23rd day of December, 1992.

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